

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 4747**  
**OFFERED BY MR. BOEHNER**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Retirement Security  
3 Advice Act of 2000”.

**4 SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
**5 PROVISION OF INVESTMENT ADVICE.**

6       (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
7 INCOME SECURITY ACT OF 1974.—

8           (1) IN GENERAL.—Section 408(b) of the Em-  
9 ployee Retirement Income Security Act of 1974 (29  
10 U.S.C. 1108(b)) is amended by adding at the end  
11 the following new paragraph:

12           “(14) If the requirements of subsection (g) are  
13 met—

14           “(A) the provision of investment advice re-  
15 ferred to in section 3(21)(A)(ii) provided by a  
16 fiduciary adviser (as defined in subsection  
17 (g)(4)(A)) to an employee benefit plan or to a  
18 participant or beneficiary of an employee ben-  
19 efit plan,

1           “(B) the sale, acquisition, or holding of se-  
2           curities or other property (including any lending  
3           of money or other extension of credit associated  
4           with the sale, acquisition, or holding of securi-  
5           ties or other property) pursuant to such invest-  
6           ment advice, and

7           “(C) the direct or indirect receipt of fees  
8           or other compensation by the fiduciary adviser  
9           or an affiliate thereof (or any employee, agent,  
10          or registered representative of the fiduciary ad-  
11          viser or affiliate) in connection with the provi-  
12          sion of such investment advice.”.

13          (2) REQUIREMENTS.—Section 408 of such Act  
14          is amended further by adding at the end the fol-  
15          lowing new subsection:

16          “(g)(1) The requirements of this subsection are met  
17          in connection with the provision of advice referred to in  
18          section 3(21)(A)(ii), provided to an employee benefit plan  
19          or a participant or beneficiary of an employee benefit plan  
20          by a fiduciary adviser with respect to such plan, in connec-  
21          tion with any sale or acquisition of a security or other  
22          property for purposes of investment of amounts held by  
23          such plan, if—

24                 “(A) in the case of the initial provision of such  
25          advice with regard to a security or other property,

1 by such fiduciary adviser to such plan, participant,  
2 or beneficiary, the fiduciary adviser provides to the  
3 recipient of such advice, at the time of or before the  
4 initial provision of such advice, a clear and con-  
5 spicuous description, in writing (including by means  
6 of electronic communication), of—

7 “(i) all fees or other compensation relating  
8 to such advice that the fiduciary adviser or any  
9 affiliate thereof is to receive (including com-  
10 pensation provided by any third party) in con-  
11 nection with the provision of such advice or in  
12 connection with such acquisition or sale,

13 “(ii) any material affiliation or contractual  
14 relationship of the fiduciary adviser or affiliates  
15 thereof in such security or other property,

16 “(iii) any limitation placed on the scope of  
17 the investment advice to be provided by the fi-  
18 duciary adviser with respect to any such sale or  
19 acquisition, and

20 “(iv) the types of services offered by the fi-  
21 duciary advisor in connection with the provision  
22 of investment advice by the fiduciary adviser,

23 “(B) in the case of the initial or any subsequent  
24 provision of such advice to such plan, participant, or  
25 beneficiary, the fiduciary adviser, throughout the 1-

1 year period following the provision of such advice,  
2 maintains the information described in clauses (i)  
3 through (iv) of subparagraph (A) in currently accu-  
4 rate form for availability, upon request and without  
5 charge, to the recipient of such advice,

6 “(C) the fiduciary adviser provides appropriate  
7 disclosure, in connection with any such acquisition  
8 or sale, in accordance with all applicable securities  
9 laws,

10 “(D) such acquisition or sale occurs solely at  
11 the direction of the recipient of such advice,

12 “(E) the compensation received by the fiduciary  
13 adviser and affiliates thereof in connection with such  
14 acquisition or sale is reasonable, and

15 “(F) the terms of such acquisition or sale are  
16 at least as favorable to such plan as an arm’s length  
17 transaction would be.

18 “(2) A fiduciary adviser referred to in paragraph (1)  
19 who has provided advice referred to in such paragraph  
20 shall, for a period of not less than 6 years after the provi-  
21 sion of such advice, maintain any records necessary for  
22 determining whether the requirements of the preceding  
23 provisions of this subsection and of subsection (b)(14)  
24 have been met. A prohibited transaction provided in sec-  
25 tion 406 shall not be considered to have occurred solely

1 because the records are lost or destroyed prior to the end  
2 of the 6-year period due to circumstances beyond the con-  
3 trol of the fiduciary adviser.

4 “(3)(A) Subject to subparagraph (B), a plan sponsor  
5 or other person who is a fiduciary shall not be treated  
6 as failing to meet the requirements of this part solely by  
7 reason of the provision of investment advice referred to  
8 in section 3(21)(A)(ii) (or solely by reason of contracting  
9 for or otherwise arranging for the provision of such invest-  
10 ment advice), if—

11 “(i) such advice is provided by a fiduciary ad-  
12 viser pursuant to an arrangement between such plan  
13 sponsor or other fiduciary and such fiduciary adviser  
14 for the provision by such fiduciary adviser of invest-  
15 ment advice referred to in such section, and

16 “(ii) the terms of such arrangement require  
17 compliance by the fiduciary adviser with the require-  
18 ments of this subsection.

19 “(B) Nothing in subparagraph (A) shall be construed  
20 to exempt a plan sponsor or other person who is a fidu-  
21 ciary from any requirement of this part for the prudent  
22 selection and periodic review of a fiduciary adviser with  
23 whom the plan sponsor or other person enters into an ar-  
24 rangement for the provision of advice referred to in section  
25 3(21)(A)(ii). Such plan sponsor or other person who is a

1 fiduciary has no duty under this part to monitor the spe-  
2 cific investment advice given by the fiduciary adviser to  
3 any particular recipient of such advice.

4 “(C) Nothing in this part shall be construed to pre-  
5 clude the use of plan assets to pay for reasonable expenses  
6 in providing investment advice referred to in section  
7 3(21)(A)(ii).

8 “(4) For purposes of this subsection and subsection  
9 (b)(14)—

10 “(A) The term ‘fiduciary adviser’ means, with  
11 respect to a plan, a person who is a fiduciary of the  
12 plan by reason of the provision of investment advice  
13 by such person to the plan or to a participant or  
14 beneficiary and who is—

15 “(i) registered as an investment adviser  
16 under the Investment Advisers Act of 1940 (15  
17 U.S.C. 80b–1 et seq.) or under the laws of the  
18 State in which the fiduciary maintains its prin-  
19 cipal office and place of business,

20 “(ii) a bank or similar financial institution  
21 referred to in section 408(b)(4),

22 “(iii) an insurance company qualified to do  
23 business under the laws of a State,

1 “(iv) a person registered as a broker or  
2 dealer under the Securities Exchange Act of  
3 1934 (15 U.S.C. 78a et seq.),

4 “(v) an affiliate of a person described in  
5 any of clauses (i) through (iv), or

6 “(vi) an employee, agent, or registered rep-  
7 resentative of a person described in any of  
8 clauses (i) through (v).

9 “(B) The term ‘affiliate’ means an affiliated  
10 person, as defined in section 2(a)(3) of the Invest-  
11 ment Company Act of 1940 (15 U.S.C. 80a–  
12 2(a)(3)).

13 “(C) The term ‘registered representative’ means  
14 a person described in section 3(a)(18) of the Securi-  
15 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(18))  
16 or section 202(a)(17) of the Investment Advisers Act  
17 of 1940 (15 U.S.C. 80b–2(a)(17)).”.

18 (b) AMENDMENTS TO THE INTERNAL REVENUE  
19 CODE OF 1986.—

20 (1) IN GENERAL.—Subsection (d) of section  
21 4975 of the Internal Revenue Code of 1986 (relating  
22 to exemptions from tax on prohibited transactions)  
23 is amended—

24 (A) in paragraph (14), by striking “or” at  
25 the end;

1 (B) in paragraph (15), by striking the pe-  
2 riod at the end and inserting “; or”; and

3 (C) by adding at the end the following new  
4 paragraph:

5 “(16) If the requirements of subsection (f)(7)  
6 are met—

7 “(A) the provision of investment advice re-  
8 ferred to in subsection (e)(3)(B) provided by a  
9 fiduciary adviser (as defined in subsection  
10 (f)(7)(C)(i)) to a plan or to a participant or  
11 beneficiary of a plan,

12 “(B) the sale, acquisition, or holding of se-  
13 curities or other property (including any exten-  
14 sion of credit associated with the sale, acquisi-  
15 tion, or holding of securities or other property)  
16 pursuant to such investment advice, and

17 “(C) the direct or indirect receipt of fees  
18 or other compensation by the fiduciary adviser  
19 or an affiliate thereof (or any employee, agent,  
20 or registered representative of the fiduciary ad-  
21 viser or affiliate) in connection with the provi-  
22 sion of such investment advice.”.

23 (2) REQUIREMENTS.—Subsection (f) of such  
24 section 4975 (relating to other definitions and spe-



1        cial rules) is amended by adding at the end the fol-  
2        lowing new paragraph:

3            “(7) REQUIREMENTS FOR EXEMPTION FOR IN-  
4        VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-  
5        ERS.—

6            “(A) IN GENERAL.—The requirements of  
7        this paragraph are met in connection with the  
8        provision of advice referred to in subsection  
9        (e)(3)(B), provided to a plan or a participant or  
10       beneficiary of a plan by a fiduciary adviser with  
11       respect to such plan, in connection with any  
12       sale or acquisition of a security or other prop-  
13       erty for purposes of investment of amounts held  
14       by such plan, if—

15            “(i) in the case of the initial provision  
16        of such advice by such fiduciary adviser to  
17        such plan, participant, or beneficiary, the  
18        fiduciary adviser provides to the plan, par-  
19        ticipant, or beneficiary, at the time of or  
20        before the initial provision of such advice,  
21        a description, in writing or by means of  
22        electronic communication, of—

23            “(I) all fees or other compensa-  
24        tion relating to such advice that the  
25        fiduciary adviser or any affiliate

1                   thereof is to receive (including com-  
2                   pensation provided by any third  
3                   party) in connection with the provi-  
4                   sion of such advice or in connection  
5                   with such acquisition or sale,

6                   “(II) any material affiliation or  
7                   contractual relationship of the fidu-  
8                   ciary adviser or affiliates thereof in  
9                   such security or other property,

10                  “(III) any limitation placed on  
11                  the scope of the investment advice to  
12                  be provided by the fiduciary adviser  
13                  with respect to any such sale or acqui-  
14                  sition, and

15                  “(IV) the types of services of-  
16                  fered by the fiduciary advisor in con-  
17                  nection with the provision of invest-  
18                  ment advice by the fiduciary adviser,

19                  “(ii) in the case of the initial or any  
20                  subsequent provision of such advice to such  
21                  plan, participant, or beneficiary, the fidu-  
22                  ciary adviser, throughout the 1-year period  
23                  following the provision of such advice,  
24                  maintains the information described in  
25                  subclauses (I) through (IV) of clause (i) in

1 currently accurate form for availability,  
2 upon request and without charge, to the  
3 recipient of such advice,

4 “(iii) the fiduciary adviser provides  
5 appropriate disclosure, in connection with  
6 any such acquisition or sale, in accordance  
7 with all applicable securities laws,

8 “(iv) such acquisition or sale occurs  
9 solely at the discretion of the recipient of  
10 such advice,

11 “(v) the compensation received by the  
12 fiduciary adviser and affiliates thereof in  
13 connection with such acquisition or sale is  
14 reasonable, and

15 “(vi) the terms of such acquisition or  
16 sale are at least as favorable to such plan  
17 as an arm’s length transaction would be.

18 “(B) MAINTENANCE OF RECORDS.—A fi-  
19 duciary adviser referred to in subparagraph (A)  
20 who has provided advice referred to in such  
21 subparagraph shall, for a period of not less  
22 than 6 years after the provision of such advice,  
23 maintain any records necessary for determining  
24 whether the requirements of the preceding pro-  
25 visions of this subsection and of subsection

1 (d)(16) have been met. A prohibited transaction  
2 described in subsection (c)(1) shall not be con-  
3 sidered to have occurred solely because the  
4 records are lost or destroyed prior to the end of  
5 the 6-year period due to circumstances beyond  
6 the control of the fiduciary adviser.

7 “(C) DEFINITIONS.—For purposes of this  
8 paragraph and subsection (d)(16)—

9 “(i) FIDUCIARY ADVISER.—The term  
10 ‘fiduciary adviser’ means, with respect to a  
11 plan, a person who is a fiduciary of the  
12 plan by reason of the provision of invest-  
13 ment advice by such person to the plan or  
14 to a participant or beneficiary and who  
15 is—

16 “(I) registered as an investment  
17 adviser under the Investment Advisers  
18 Act of 1940 (15 U.S.C. 80b–1 et seq.)  
19 or under the laws of the State in  
20 which the fiduciary maintains its prin-  
21 cipal office and place of business,

22 “(II) a bank or similar financial  
23 institution referred to in subsection  
24 (d)(4),

1                   “(III) an insurance company  
2                   qualified to do business under the  
3                   laws of a State,

4                   “(IV) a person registered as a  
5                   broker or dealer under the Securities  
6                   Exchange Act of 1934 (15 U.S.C. 78a  
7                   et seq.),

8                   “(V) an affiliate of a person de-  
9                   scribed in any of subclauses (I)  
10                  through (IV), or

11                  “(VI) an employee, agent, or reg-  
12                  istered representative of a person de-  
13                  scribed in any of subclauses (I)  
14                  through (V).

15                  “(ii) AFFILIATE.—The term ‘affiliate’  
16                  means an affiliated person, as defined in  
17                  section 2(a)(3) of the Investment Company  
18                  Act of 1940 (15 U.S.C. 80a–2(a)(3)).

19                  “(iii) REGISTERED REPRESENTA-  
20                  TIVE.—The term ‘registered representa-  
21                  tive’ means a person described in section  
22                  3(a)(18) of the Securities Exchange Act of  
23                  1934 (15 U.S.C. 78c(a)(18)) or section  
24                  202(a)(17) of the Investment Advisers Act  
25                  of 1940 (15 U.S.C. 80b–2(a)(17)).’.

1   **SEC. 3. EFFECTIVE DATE.**

2           The amendments made by this Act shall apply with  
3   respect to advice referred to in section 3(21)(A)(ii) of the  
4   Employee Retirement Income Security Act of 1974 or sec-  
5   tion 4975(e)(3)(B) of the Internal Revenue Code of 1986  
6   provided on or after January 1, 2001.